



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

JUL 21 2003

Paper No. 12

In re Application of :
Hung Chen *et al* : DECISION ON PETITION
Application No. 09/728,038 :
Filed: December 1, 2000 :
Attorney Docket No. AMA/3778/CAMP/CAMP/RKK :

This is a decision on the petition filed on June 10, 2003 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated October 23, 2002, a final rejection. This relief is available under 37 CFR 1.181, without fee, and is within the jurisdiction of the undersigned.

The petition is denied.

Petitioners allege that the application is not abandoned because a timely reply to the Office letter in question was in fact filed. Petitioners have supported this allegation by enclosing a copy of the reply and a copy of the filing receipt for the reply which shows that the reply was received in the Office on January 23, 2003. Petitioners argue that because there was a delay in associating the response with the application file, the examiner's advisory action refusing entry of the response was not mailed until after the expiration of the maximum six month statutory period permitted by 35 USC § 133, resulting in abandonment of the application.

As previously noted, the October 23, 2002 Office letter was a final rejection. Under 37 CFR 1.113 and 1.116, only certain replies to a final rejection are considered to be proper replies. The reply filed by petitioners was not considered by the examiner to be a proper reply to the final rejection. Therefore, the reply filed on January 23, 2003 was insufficient to avoid abandonment. It was petitioners' duty to closely monitor the status of the application and to timely file a proper reply to the final rejection insofar as the regulations define the type of replies that constitute a proper reply to a final rejection. See also MPEP §§ 714.12 and 714.13. In the absence of a timely and proper reply to the final rejection dated October 23, 2003, it appears that the application was properly held to have become abandoned for failure to timely file a proper reply to the final rejection.

For the foregoing reasons, the application is considered to have been properly held to be abandoned. It appears that petitioners' remedy is to proceed pursuant to 37 CFR 1.137. However, petitioners are entitled to file a request for reconsideration of this decision, without fee, provided that such request is filed within two months of the date of this decision. See 37 CFR 1.181(f).

This application is being returned to storage as an abandoned file so that it may readily be accessed by the Office of Petitions in the event that petitioner instead elects to proceed under 37 CFR 1.137 rather than by way of a filing a request for reconsideration under 37 CFR 1.181.

PETITION DENIED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

Applied Materials, Inc.
2881 Scott Blvd. M/S 2061
Santa Clara, CA 95050